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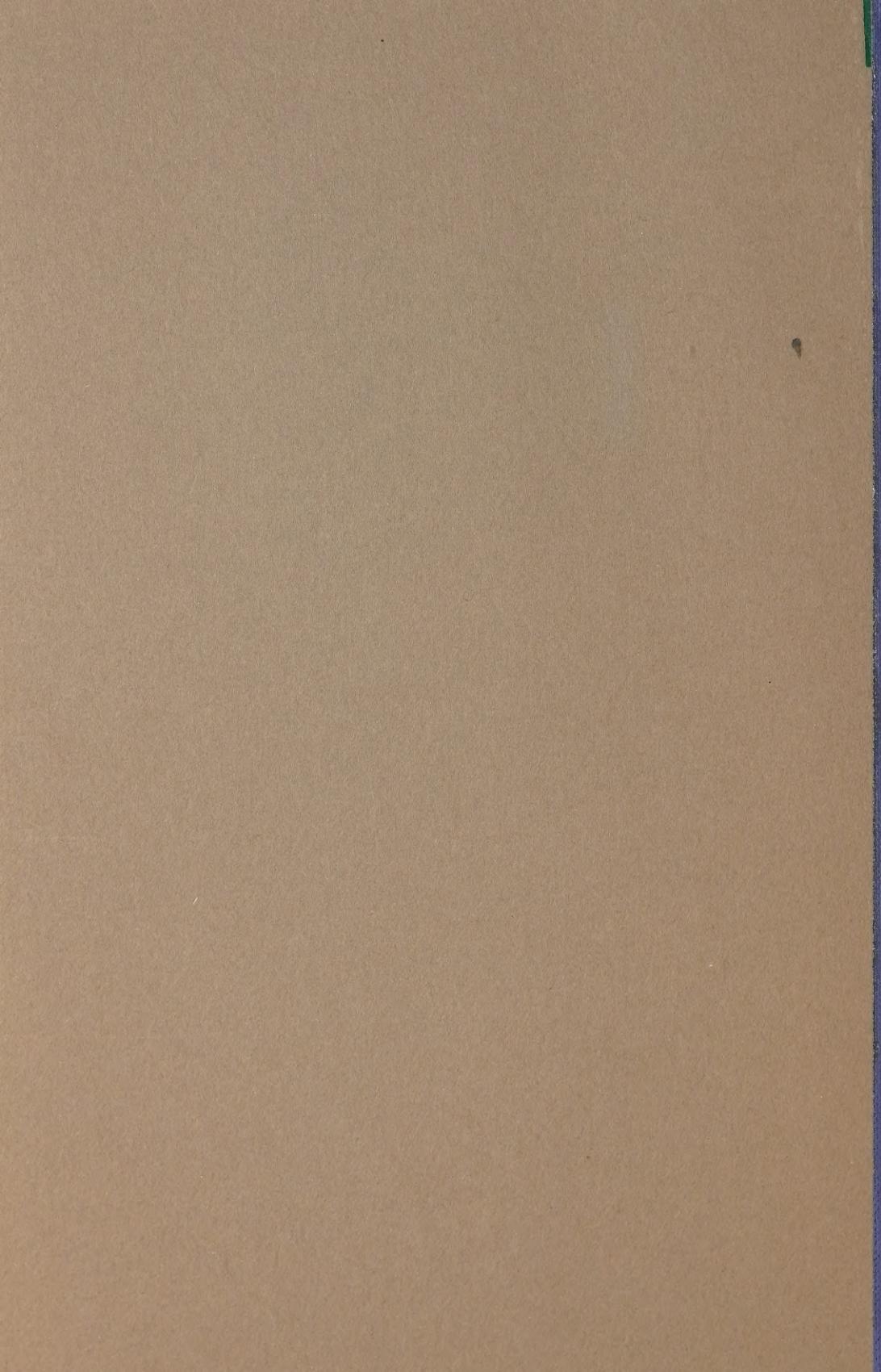
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1.Correspondence ... 2.Report
of the Canadian National Ad-
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St. Lawrence Waterway Project

1. Correspondence between the Governments of Canada and the United States, 1927-28.
2. Report of the Canadian National Advisory Committee, January, 1928, and observations thereupon by certain of its members.
3. Orders in Council referring to the Supreme Court of Canada certain questions as to water power rights of the Dominion and the Provinces.



OTTAWA
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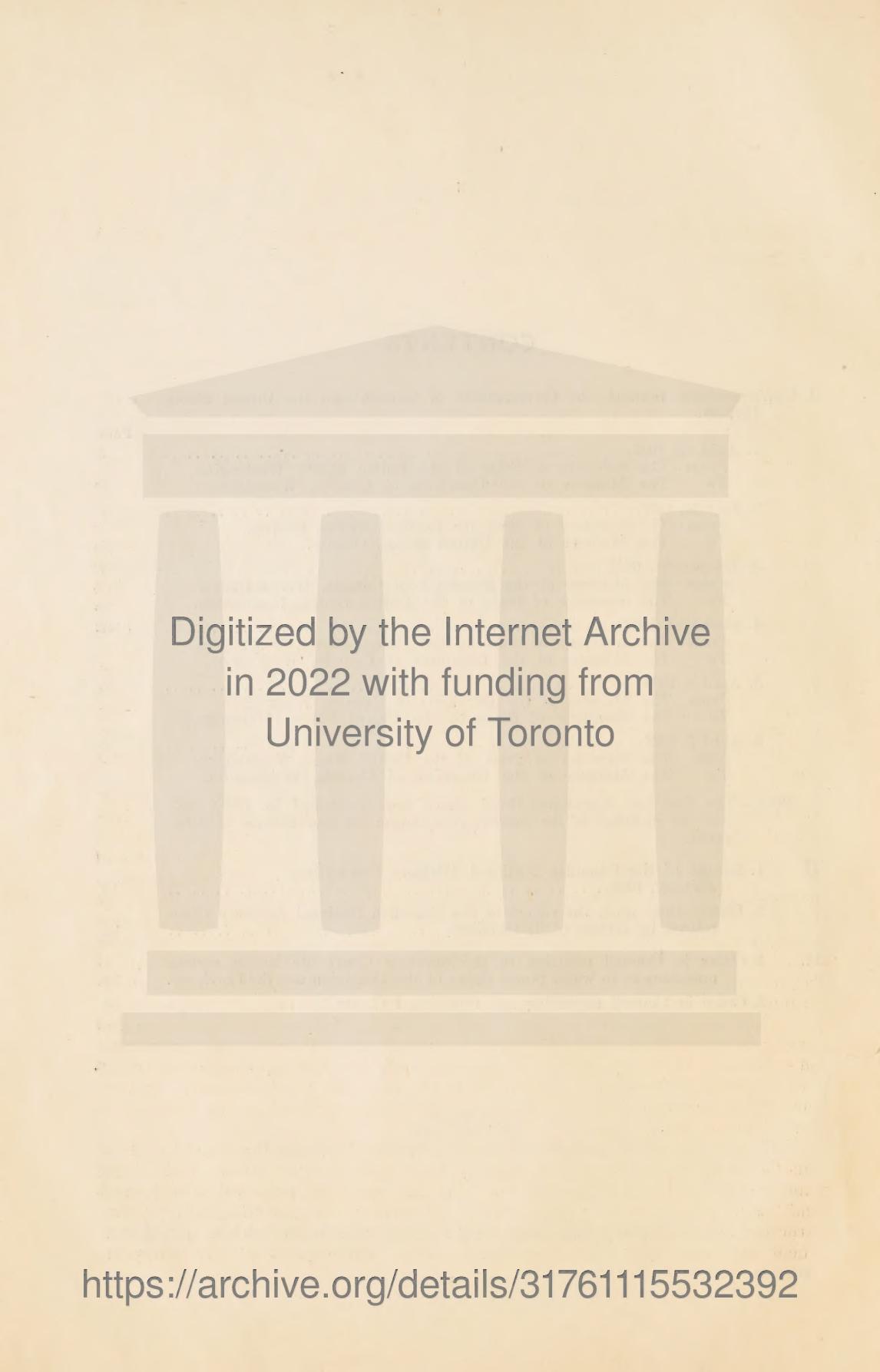
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I.

CORRESPONDENCE BETWEEN THE GOVERNMENTS OF CANADA AND THE UNITED STATES, 1927-28.

1. From the Secretary of State of the United States, Washington, to the Minister of the Dominion of Canada, Washington.

April 13, 1927.

SIR,—For more than one hundred years, the Great Lakes and the St. Lawrence River have furnished a common highway and transportation outlet for the population in the interior of the continent in both the United States and Canada. The waterway has been the subject of several treaties and conventions between the two countries. Its development has been a matter of continuous effort on the part of both countries.

Pursuant to reference made to the International Joint Commission by both governments under authority of the treaty of January 11, 1909, that commission made investigation of the feasibility of improving navigational facilities of the St. Lawrence River between Montreal and Lake Ontario so as to transform that section into an ocean shipway. The Commission submitted its report, signed on December 19, 1921, to your Government and to the Government of the United States after taking into consideration the existing characteristics of the waterway and its projected development, as well as the essential economic factors. It earnestly recommended to both governments the making of a treaty for a scheme of shipway improvement of the river between Montreal and Lake Ontario. It suggested, however, that before final decision be made the engineering features should receive further consideration and study. Delays naturally ensued due to the problems of reconstruction resulting from the war.

On March 14, 1924, the President of the United States appointed the St. Lawrence River Commission under the chairmanship of the Honourable Herbert Hoover, Secretary of Commerce, to consider the whole project in its economic and national aspects and to express an opinion as to whether the project should be undertaken, and the Government of Canada, on May 7, 1924, appointed a national advisory committee under the chairmanship of the Honourable George Perry Graham, Minister of Railways and Canals. Through the arrangements brought about by these committees the two governments by exchange of notes dated February 4 and March 17, 1925, gave instructions to a Joint Board of Engineers designated by them to review and extend the engineering plans as recommended by the International Joint Commission in 1921.

This Joint Engineering Board made an elaborate resurvey of the lake and river systems both as to navigation and power, and filed with each government an exhaustive report upon all its engineering aspects. The representatives of the two countries differed as to a few details but from the report it clearly appears that the improvement of the waterway for navigation and power purposes is both feasible and advisable.

The St. Lawrence River Commission appointed by the President to advise this Government on the subject recently undertook an examination of all of the economic as well as engineering facts bearing upon the proposed development and has made a complete report covering all aspects. It concluded that the construction of the shipway at proper depths would relieve the interior of the continent, especially agriculture, from the economic handicaps of adverse transport-

ation costs which now operate to the disadvantage of many states and a large part of Canada, would serve the industrial well-being of both countries in the development of their power resources, and would tend largely to the increase of prosperity and the stimulation of industry. The Commission recommended that negotiations should be entered into with your Government in an endeavour to arrive at an agreement as to the speedy development of this waterway.

The Government of the United States adopts the recommendations of the St. Lawrence Commission. It appreciates the advantages which will accrue equally to both countries by the opening of the waterway to ocean shipping. It feels that the necessary increase in railway rates due to the war, and the modern practices respecting the generation and transmission of hydro-electric power, have increased the importance and practicability of early development, and believes that the factors which influence its conclusions must have equal application to, and influence upon, the Dominion of Canada.

In view of the action already taken by both governments, it is apprehended that they are in accord on the principle that the project should be undertaken. If this Government's conclusion in this respect be correct, there only remains to be effected an understanding as to the methods and means for its earliest accomplishment. It seems highly appropriate that the development of the common highway for the benefit of both countries should be jointly undertaken.

This Government is prepared to enter into negotiations with a view to the formulation of a convention appropriate to this subject and should be grateful to be informed of the views entertained on this subject by your Government.

Accept, Sir, the renewed assurance of my highest consideration.

(Sgd.) FRANK B. KELLOGG

The Honourable VINCENT MASSEY,
Minister of the Dominion of Canada.

2. *From the Secretary of State for External Affairs, Ottawa, to the Minister of the United States, Ottawa.*

OTTAWA, July 12, 1927.

SIR.—The Government of Canada has received and considered carefully the note of the Secretary of State of the United States to the Canadian Minister at Washington of April 13th, 1927, on the St. Lawrence Waterway.

It shares the appreciation felt by the Government of the United States of the importance of the problem of the development of the St. Lawrence and of the aid in the solution of the engineering aspects of this problem afforded by the reports of the International Joint Commission and of the Joint Board of Engineers appointed by the two Governments in 1925.

The report of the Joint Board of Engineers signed on November 16th, 1926, while unanimous in many respects, indicated differences of opinion on important phases of the development proposed. It is understood that in the appendices to the report, which are in preparation, certain further alternative schemes will be presented which will be of essential value in arriving at a conclusion.

The National Advisory Committee appointed by the Government of Canada to report on the economic and general aspects of the St. Lawrence Waterway question will not be in a position to make a final report until all the findings of the Joint Engineering Board, including the appendices, are available. Upon receipt of the report of the National Advisory Committee and upon consideration of the other factors involved, the Government of Canada will be able to

determine its policy on the question, and will have pleasure in discussing further with the Government of the United States at as early a date as possible the whole situation, including the proposals contained in the present note of the Secretary of State.

Accept, sir, the renewed assurances of my highest consideration.

(Sgd.) W. L. MACKENZIE KING.

The Honourable WILLIAM PHILLIPS,
Minister of the United States,
Ottawa.

3. From the Minister of the Dominion of Canada, Washington, to the Secretary of State of the United States, Washington.

No. 30.

January 31, 1928.

SIR,—I have the honour to refer to your note of April 13, 1927, in which, after reviewing the steps taken in recent years by the United States and Canada to enquire into the feasibility of a St. Lawrence ocean shipway, you stated that the Government of the United States had accepted the recommendations of the St. Lawrence River Commission, appointed by the President as an advisory body, and was accordingly prepared to enter into negotiations with Canada with a view to formulating a convention for the development of the waterway.

Acknowledgment of this communication was made in a note of July 12, 1927, addressed to the Minister of the United States at Ottawa, in which it was stated that, as the report of the Joint Board of Engineers indicated differences of opinion as to the solution of the engineering difficulties presented by the international section of the waterway, the National Advisory Committee, appointed by His Majesty's Government in Canada to report on the economic and general aspects of the waterway question, would not be in a position to advise the Government until certain alternative schemes under consideration by the Joint Board, and to be included in the appendices to the main report, had been received and duly considered.

The full report of the Board has now been received, and the National Advisory Committee, which met in Ottawa this month, has reported its conclusions to His Majesty's Government in Canada. The National Advisory Committee concurs in the finding of the Joint Board of Engineers that the project is feasible. It recommends, however, that should the work be undertaken, fuller allowance should be made for future requirements by providing, in addition to 30-foot depth for the permanent structures, 27-foot navigation in the reaches rather than the 25-foot navigation proposed by the Joint Board. While the National Advisory Committee regards the project as feasible from an engineering standpoint, and notes the findings of the International Joint Commission in 1921 as to its economic practicability, it considers that the question of its advisability at the present time depends upon the successful solution of a number of financial and economic difficulties, and upon further consideration of certain of the engineering features as to which the two sections of the Joint Board of Engineers are not as yet agreed. I am instructed by the Secretary of State for External Affairs to inform you that His Majesty's Government in Canada concurs in these conclusions of the National Advisory Committee.

In your note of April 13, it was observed that the St. Lawrence River Commission had reported that the construction of a shipway at proper depth would relieve the interior of the continent, especially agriculture, from the

economic handicaps of adverse transportation costs which, it was indicated, now operate to the disadvantage of many States and a large part of Canada. It was added that the Government of the United States appreciated the advantages which would accrue equally to both countries by opening up the waterway to ocean shipping, and that the necessary increase in United States railway rates due to the war, and the desirability of early development of hydroelectric power, were factors which must have equal application to, and influence upon, the Dominion of Canada.

In view of the implications as to Canadian conditions contained in these observations, it may be well to indicate certain features of the transportation situation in Canada which have a direct bearing upon the St. Lawrence waterway question.

For many years past the improvement of transportation has been the foremost task of successive governments of Canada. At heavy cost, an extensive program of railway, waterway, and harbour development has been carried out, with the object of linking up all parts of the Dominion and providing adequate outlets for foreign trade. Two great transcontinental railway systems have been built up, largely with state aid, and both western and eastern Canada are now reasonably well served by railways, though increasing settlement and increasing production render it necessary for both systems to continue to spend large sums annually in the provision of branch lines. Western Canada is now looking to the early completion of the Hudson Bay route to Europe. This route, which it is anticipated will be available in about three years, will shorten the haul to Europe from the Canadian West by a thousand miles and more, and will also be of substantial benefit to shippers from the Western States. Since that work was projected, the completion of the Panama Canal, by the efforts of the United States, has supplied an alternative outlet for much of western Canada through Vancouver and Prince Rupert; and at the present time the Canadian Government is faced with a strong demand for an additional and more direct outlet to the Pacific for the Peace River country. The St. Lawrence route itself has been progressively improved, and has proved of steadily increasing service.

Partly as a result of the existence of competitive alternative outlets, railway rates in Canada are in general lower than in the United States. The rates on grain, which provides fifty-two per cent of the total traffic of western lines, are now below pre-war level. Material reductions have also been made in another bulk movement of importance to both eastern and western Canada, namely, coal. General commodity rates, which were the subject of the same percentage of relative increase in both countries, due to war conditions, have subsequently been reduced in Canada, in certain instances, to a greater extent than in the United States. In recent months a rate on grain has been established from the head of the Lakes to Quebec which approximates the charges incident to the movement by water by the present Great Lakes—St. Lawrence route, a route which, in Canada, has always exercised a restraining influence on railway rates. As the greater part of Canada's railway mileage is now owned and operated by the state, the St. Lawrence proposals, in so far as they may possibly affect the revenues of the railways, present considerations as to which Canada's point of view is necessarily somewhat different from that of the United States.

Canada's interest in the improved navigation of the Great Lakes—St. Lawrence route would be associated largely with the movement of bulk commodities, such as grain, timber and coal. The movement of package freight by water in Canada is at present of small volume, and Canadian railways, unlike, it is understood, those of the Midwest of the United States, are in a position to handle much more of that traffic than at present is offered.

It is believed that development of the waterway would prove of advantage to Canadian commerce and industry, not merely in the sections directly tributary to the Great Lakes and St. Lawrence, but in the Maritime sections, which would be afforded more direct access to the great interior markets of the continent. It is, however, apparent that the United States would benefit much more from the enlarged navigation facilities, both in extent of use and in margin of saving. The report of the International Joint Commission in 1921, after a comprehensive review of the economic aspects of the project, presented the following conclusions, to which the National Advisory Committee calls attention:—

"As to the economic practicability of the waterway, the Commission finds that, without considering the probability of new traffic created by the opening of a water route to the seaboard, there exists today, between the region economically tributary to the Great Lakes and overseas points as well as between the same region and the Atlantic and Pacific seaboards, a volume of outbound and inbound trade that might reasonably be expected to seek this route sufficient to justify the expense involved in its improvement.

"It finds that, as between the American and Canadian sides of the tributary area, the former contributed very much the larger share of this foreign and coastwise trade, and in all probability will continue to do so for many years to come. The benefits to be derived from the opening of a water route to the sea will, therefore, accrue in much larger measure to American than to Canadian interests, though it is reasonable to assume that eventually the advantages may be more evenly distributed."

The report of the International Joint Commission continues, in a direct reference to comparative transportation conditions:—

"It finds that the existing means of transportation between the tributary area in the United States and the seaboard are altogether inadequate, that the railroads have not kept pace with the needs of the country, but that this does not apply to the Canadian side of the area, where railway development is still in advance of population and production."

It will therefore be observed that the transportation situation in the two countries is not identical as to available facilities, extent of use, or rates and that the economic handicaps to which you referred in your note of April 13 appear to have more application to United States than to Canadian conditions. In this connection, it may be said that Canadian agriculture is more directly affected by the restrictions on the importation of Canadian farm products which have been imposed by the United States in recent years, with the object, it is understood, of assisting agriculture in those Western States which would share so largely in the benefits of the proposed St. Lawrence Waterway. This situation, and the effects upon the Maritime sections of Canada of United States duties on the products of the fisheries, are among the factors which have contributed to bringing it about that public opinion in Canada has not so clearly crystallized in favour of the waterway project as appears to be the case in the United States.

Reference was made in your note to the early development of hydro-electric power as a factor which must have equal application to and influence upon the Dominion of Canada. The opportunity of developing great quantities of power incidental to navigation is, it is agreed, a special advantage possessed by the St. Lawrence project, and an important consideration in determining its advisability. In this aspect of the project, however, there are again special features in the Canadian situation which it is desirable to make clear. Public opinion in Canada is opposed to the export of hydro-electric power, and is insistent that such power as may be rendered available on the St. Lawrence, whether from

the wholly Canadian section, or from the Canadian half of the international section, shall be utilized within the Dominion to stimulate Canadian industry and develop the national resources. With this view the National Advisory Committee expresses itself as in complete accord. The Committee further indicates that, in view of the relatively limited capacity of the Canadian market to absorb the vast blocks of power contemplated by the St. Lawrence proposals, it follows that it is most important, in any arrangement which may be considered, that the development of power on the Canadian side should not exceed the capacity of the Canadian market to absorb it.

The situation presented by the differences of opinion brought out in the report of the Joint Board of Engineers as to the best method of development in the international section of the St. Lawrence has also received consideration by the National Advisory Committee. The Committee considers it greatly in the public interest that a further attempt should be made to reconcile these varying views. Conclusive assurance is necessary as to control of the fluctuations of flow from Lake Ontario, so essential to the interests of the purely national sections of the river and the port of Montreal, and as to the situation of those Canadian communities on the St. Lawrence, which under certain of the present plans might be obliged to live under levees or to rebuild in part. A plan has been presented in the appendices to the report of the Joint Board of Engineers proposing an alternative location of the upper works of the Canadian two-stage plan. It is also considered advisable that opportunity should be afforded for further conference on these alternative proposals between the Canadian section of the Joint Board and engineers representing the Province of Ontario, who have themselves formulated plans dealing with the international section.

The financial phases of the project have been reviewed by the Committee. It is pointed out that for many years Canada has been engaged in improving the navigation of the St. Lawrence river, both above and below Montreal, and in providing navigation facilities across the Niagara peninsula. At the same time, the United States has been similarly engaged in deepening inter-connecting channels of the Upper Lakes, and in providing suitable works at Sault Ste. Marie. Towards the common object, Canada has made particularly heavy contributions. It has expended over thirty millions on the ship channel which has made possible ocean navigation on a large scale to the port of Montreal, an expenditure by which the proposed St. Lawrence project will directly benefit. The Dominion has spent fifty millions on canals and channel improvements between Montreal and Lake Erie, in which improved navigation United States shipping has had equal use and advantage. To the present, Canada has spent eighty-seven millions on the Welland Ship Canal. In view of these facts and of the very heavy financial burdens imposed by the war, by the railway obligations arising out of the war, and by the necessity, since the war ended, of finding the large sums required for needed public works throughout the Dominion, it is considered that it would not be sound policy to assume heavy public obligations for the St. Lawrence project.

The National Advisory Committee has reached the conclusion that it is possible to work out a method by which provision could be made for the construction of the waterway on terms which would be equitable to both countries and would take adequate account of the special factors in the Canadian situation to which attention has been directed. Several methods have been considered, but the plan which chiefly commends itself to the Committee is, in brief, that Canada should consider providing for the construction of the waterway in the sections wholly Canadian, that is, the Welland Ship Canal and the works in the St. Lawrence below the international boundary, and that the United States should consider undertaking the completion of a 27-foot waterway to the head of the Lakes, in addition to meeting the entire cost of the

development, under joint technical supervision on lines to be agreed upon, of the international section of the St. Lawrence, both for navigation and for power. The construction of the wholly Canadian (Welland and St. Lawrence) sections, and, if the United States should see fit, of the upper lakes works, would, on this plan, be given precedence of the international section, because of the necessity alike of providing for further consideration of the engineering problems involved in the international section and of permitting reasonable absorption of the power developed on the Canadian side.

In support of this view, the following statement is submitted by the Committee, based on expenditures by both countries on the present through waterway, and on the estimated cost of the presently recommended scheme, with 27-foot navigation, a new United States lock at Sault Ste. Marie of the same dimensions as proposed for the St. Lawrence Shipway, and the development, on the St. Lawrence, of such power as is incidental to navigation:—

CANADA

Present works:

St. Lawrence ship channel	\$30,000,000
St. Lawrence and Welland Canals	50,000,000
Lock at Sault Ste. Marie, Ontario	5,560,000

Proposed works:

Welland ship canal	\$115,600,000
Wholly Canadian section, St. Lawrence shipway, 27-ft. navigation and development of 949,300 h.p.	199,670,000
Total for Canada	\$400,830,000

UNITED STATES

Present works:

Dredging St. Clair and Detroit rivers	\$ 17,536,000
Locks at Sault Ste. Marie, Michigan	26,300,000

Proposed works:

International section St. Lawrence shipway 27-ft. navigation and initial development of 597,600 h.p.	\$182,157,000
To complete development—additional power 1,602,000 h.p.	92,090,000
Upper lake channels to 27-ft.	65,100,000
Total for United States	\$383,183,000

In bringing these conclusions of the National Advisory Committee to the attention of the Government of the United States, His Majesty's Government in Canada desires to add that there are phases of the question, particularly as regards the development of power, as to which it is necessary to take account of the special concern of the two provinces of Canada bordering on the waterway. The relation between navigation and power involves certain constitutional difficulties, of which, in accordance with the wishes of the Governments of Ontario and Quebec, the Government of Canada proposes to seek a solution by reference to the Courts. With this preliminary difficulty in process of solution, the Government of Canada will be in a position, upon learning from the Government of the United States whether in its view the procedure above outlined affords an acceptable basis of negotiation, to consult with the Provinces of Ontario and Quebec on the aspects of the problem with which they may be concerned, and thus to facilitate an understanding being reached between all concerned as to the methods and means by which the project could be undertaken.

It is the hope of the Government of Canada that, in any such further consideration of the waterway question, opportunity may be found for reaching a comprehensive settlement of all outstanding problems affecting the Great Lakes.

and the St. Lawrence, including the preservation of the waters properly belonging to the St. Lawrence watershed, of which the present discussion indicates the paramount importance.

I shall be obliged if you will be good enough to inform me at your convenience, for transmission to His Majesty's Government in Canada, of the views of the Government of the United States on the representations which are outlined above.

I have, etc.,

(Sgd.) VINCENT MASSEY.

The Honourable FRANK B. KELLOGG,
Secretary of State of the United States,
Washington, D.C.

4. From the Secretary of State of the United States, Washington, to the Minister of the Dominion of Canada, Washington

March 12, 1928.

SIR,—I have the honour to acknowledge your note of January 31, 1928, in which you inform me of the findings and recommendations of the National Advisory Committee in regard to the proposed St. Lawrence waterway improvement.

I note the view of the National Advisory Committee that the question of the advisability of the improvement at the present time depends upon the solution of a number of financial and economic difficulties and upon further consideration of certain of the engineering features and the conclusion of the Committee that it is possible to work out a method by which provision could be made for the construction of the waterway on terms which would be equitable to both countries and would also take adequate account of the factors in the Canadian situation which you have set forth.

The suggestions outlined in your note have received thorough consideration. While the United States is not in complete agreement with the representations made by the Canadian Government as to the relative benefits and ultimate costs to the two countries of the proposed improvement of the St. Lawrence and the division of expense to be borne by each country, it is inclined to regard as an acceptable basis of negotiation a proposal along the general lines suggested in your note; that the prosecution of the improvement of the St. Lawrence waterway be based on the undertaking by the United States of the deepening of the necessary channels through the interconnecting waters of the Great Lakes and the improvement of the international section of the St. Lawrence both for navigation and for power; and the undertaking by Canada of the construction of the waterway in the sections wholly Canadian, that is, the Welland Canal and the works in the St. Lawrence below the international boundary.

Whether the United States expends its share of the cost on the international section and Canada its share on the national sections would seem to be immaterial if, in the negotiations, there is a fair division of expense for a through deep waterway to the Ocean. Of course, in such an arrangement, all sections of the deep waterway should be so constructed as to make them most suitable for a through system of transportation. This is a detail to which I have no doubt your Government will entirely agree. The use of the waterway should be properly safeguarded by treaties between the two countries.

Concerning the value of the route to the sea to the two countries, I have noted the suggestions made in your note of January thirty-first. I might say

that, while it may not be very material to the main issue, the United States has the use of the Panama Canal which is of great benefit to it especially on the Pacific, Atlantic and Gulf coasts. It has also the use of the Gulf of Mexico which reaches a considerable way across the Continent on the South and furnishes valuable water transportation for a large portion of the Southwestern part of the United States. Both of these waterways exercise a great influence on freight rates. The United States has other harbours on the Atlantic, such as New York served by both railways and the Erie Canal, Philadelphia, Baltimore and Norfolk, which involve a shorter railroad haul from the Great Lakes territory to the Ocean than is enjoyed by Canada. Nevertheless, I feel that the construction of a deep waterway through the St. Lawrence to the Ocean will be of tremendous advantage to most, if not all, of the territory in the northern part of the United States, as well as to the corresponding territory in Canada.

Referring to your suggestions as to the order in which the different works should be undertaken, it would seem to me that this matter will also have to be the subject of negotiation because the works ought to proceed so that all parts of the navigation system would be completed substantially at the same time and the United States ought to have the advantage of its share of the power of the international section without waiting until Canada may be able to sell her power from these works.

Referring to the balance sheet, which undoubtedly was included in your note to illustrate the principles of the division of costs and the work to be done by each country, I am in general accord with those principles. The amounts and some of the items would have to be considered and discussed in the negotiations. To illustrate: I am not inclined to the view that it is right to include in the balance sheet the costs of the St. Lawrence and Old Welland Canals except so far as they may be of use to the deeper system. These works are understood to be for lighter craft and of little value for the purpose of the works now proposed. These waterways are understood to have served their purpose in economic returns. It would also seem to be necessary to differentiate between the costs that may properly be chargeable to navigation and those to power in general. Those who now or in the future profit by the power should bear their share of the expense. It is understood that the power development will carry itself. To illustrate: under the suggestions you make, the United States will have no proprietary interest in the power on the national section. It would, therefore, seem that as this development is for the benefit of Canada, your Government should be responsible for that expense, and that such expense should take into account the costs to be borne by the respective interests whether the power is actually installed now or later. The amount, therefore, which power on the national section should contribute to the cost of the improvement should be left open for consideration and subject to determination in the negotiations. All power, of course, developed for joint benefit in the international section should ultimately be paid for as a part of the joint venture. The application of this principle would change the proposed balance sheet considerably. Therefore, if, as you suggest as to this section, the United States is willing to build not only the waterway but the power, it would seem that the United States ought to be permitted to develop its power and use its half, the other half to be used by Canada or not as it should desire.

The United States is agreeable to the proposal that all navigation channels provided in improvements have a minimum depth of 27 feet, the permanent structures having a depth of 30 feet for future expansion. The United States has at present under consideration the deepening of the lake channels to the extent economically justified by the present commerce of the Great Lakes. There is one question that we should like to leave for discussion and that is, whether

it would be economical to at once build a new lock and deepen the Soo Canal until such time as the St. Lawrence is nearing completion so that there would be a demand for deeper channels. It is clearly advisable that the large expenditures required for depths in excess of present needs be deferred until the greater depths can be profitably used.

The United States fully recognizes the right of the Dominion of Canada to the ownership and use of the Canadian share of the power which may be developed in the international section of the waterway as well as to all that developed in the national section and it recognizes also that the disposition of the power is purely a domestic question. It recognizes further that this share is an inherent attribute of Canadian sovereignty, irrespective of the agency by which the power may be developed.

The United States regards it a fundamental economic principle that the beneficiaries of power developed in the improvement of the International Section of the St. Lawrence should pay ultimately their fair share of the cost of its production, whether the agency constructing these works be a corporation, a state or province, or a national government. It believes that a practical means can be found for effecting the fulfillment of this principle in the arrangements made for the improvement of the international section of the river for the joint benefit of navigation and power development, and believes that the negotiations entered into in furtherance of the undertaking of the project should have this end in view.

The large expenditures required for the undertaking are a matter of grave concern to the United States as well as to Canada. It is felt that when the United States embarks on the enterprise all expenditures should be on a sound economic basis.

The United States accepts without reservation the principle that the operation of works in the International Section must be such as will control fluctuations of the outflow from Lake Ontario in such manner as to safeguard all interests on the purely Canadian sections of the river, including especially the Port of Montreal. It regards as acceptable the proposal that the design and operation of works in the International Section of the river be under joint technical control and assumes that the design of all works on the waterway will comply in general with the plans agreed upon by the Joint Engineering Board as embodying the best principles.

The United States is fully in accord with the view that the advisability of undertaking the improvement at the present time depends on the solution of the financial and economic problems involved. It shares the hope expressed that a solution will be found which will fully safeguard the interests of the two countries and will afford an equitable basis for a division of the cost. It is confident that when these economic principles are determined, the solution of the engineering problems required for their fulfillment will be speedily realized.

I have the honour to suggest, therefore, that the two countries proceed with the appointment of commissioners to discuss jointly the problems presented in your note, and those which I have presented herein with a view to the formulation of a convention appropriate to this subject.

The Government of the United States will be glad to have this discussion extended to the further consideration of any outstanding problems affecting the Great Lakes and the St. Lawrence as suggested in your note.

Accept, sir, the renewed assurance of my highest consideration.

(Sgd.) FRANK B. KELLOGG.

The Honourable VINCENT MASSEY,
Minister of the Dominion of Canada.

5. From the Minister of the Dominion of Canada, Washington, to the Secretary of State of the United States, Washington.

No. 64.

April 5, 1928.

SIR,—I have the honour to refer to your note of March 12, 1928, on the St. Lawrence Waterway project.

The Secretary of State for External Affairs has noted that while the United States is not in complete agreement with the representations contained in my note Number 30 of January 31, 1928, as to the relative benefits and ultimate costs to the two countries of the proposed improvement and the division of expenses to be borne by each country, it is inclined to regard as an acceptable basis of negotiation the suggestions of the National Advisory Committee summarized in my note as to the division between Canada and the United States of the tasks involved in the completion of the Deep St. Lawrence Waterway.

The Secretary of State for External Affairs has also noted that the United States agrees that a channel of twenty-seven feet minimum depth would be advisable, accepts the principle that the works in the international section must be so operated as to control fluctuations of the outflow from Lake Ontario in such manner as to safeguard all interests on the purely Canadian sections, including the port of Montreal, and agrees that the design and operation of the works in the international section should be under joint technical control. It is noted also that the United States would be prepared to have the discussion extended to the consideration of any outstanding problems affecting the Great Lakes and the St. Lawrence watershed, as suggested in my previous note.

In your note under reference you raise some question as to the relative advantage of the waterway to each country and as to the validity of some of the items included on the Canadian side of the balance sheet presented for illustrative purposes by the National Advisory Committee, and refer also to the problems involved in the allocation of costs as between navigation and power. At the present stage it does not appear necessary to discuss these points in detail.

It is further noted that you do not favour the recommendation of the National Advisory Committee, which was an integral feature of its plan and of the division of tasks which it proposed, that the works on the national section should be given priority over the works on the international section in order to permit an agreed solution of the engineering difficulties in this area, and to ensure reasonable absorption of the power developed on the Canadian side. In view of the fact that the market for hydro-electric power in Canada, though large and rapidly expanding, has definite limitations, and that export of power is considered contrary to public policy, it is an essential factor in any plan economically feasible from the Canadian standpoint that, whether through the priority procedure set out by the National Advisory Committee or by some alternative method, the development of power to be utilized in Canada should not outrun the capacity of the Canadian market to absorb and thus to meet the proportion of the costs of the waterway fairly chargeable to power.

The National Advisory Committee laid emphasis on another phase of the situation—the necessity of reconciling the divergent views of the two sections of the Joint Board of Engineers as to the best method of development in the international section of the St. Lawrence. Definite and agreed engineering proposals for the development of this section would appear to be a necessary preliminary to any computation of costs or decision as to the order of construction or division of tasks. His Majesty's Government in Canada has previously

referred to the view of the National Advisory Committee, which it shares, that a conference should be held between the Canadian section of the Joint Board and engineers representing the Province of Ontario. It would appear advisable that such a conference should be followed by re-consideration of the engineering problems in the international section by the whole Joint Board.

Reference was made in my previous note to certain constitutional questions affecting the Canadian situation, and to the intention of His Majesty's Government in Canada, in accordance with the wishes of the Governments of Ontario and Quebec, to seek a solution by reference to the Courts. Steps have since been taken to this end, and it is anticipated that the reference will come before the Supreme Court of Canada at an early date.

It was further indicated in my previous note that, with the constitutional question in process of solution, His Majesty's Government in Canada would be in a position, upon learning whether the Government of the United States considered that the procedure suggested by the National Advisory Committee formed an acceptable basis of negotiation, to consult with the Provinces of Ontario and Quebec upon the aspects of the problem with which they may be concerned. While the acceptance by the United States of this basis of negotiation is attended with important qualifications, yet the position of the Government of the United States has been made sufficiently clear and definite to permit the Government of Canada to take the necessary step thus contemplated and discuss with the provinces the aspects in question. Following this consultation, His Majesty's Government in Canada will be in a position to inform the Government of the United States further of its views on the proposals contained in your note of March 12.

I have the honour to be,
with the highest consideration, sir,
Your most obedient, humble servant,

(Sgd.) LAURENT BEAUDRY,
(For the Minister)

The Honourable FRANK B. KELLOGG,
Secretary of State of the United States,
Washington, D.C.

6. From the Secretary of State of the United States, Washington, to the Minister of the Dominion of Canada, Washington

April 7, 1928.

SIR,—I have the honour to receive your note of April 5, 1928, with reference to the negotiations between the Canadian Government and the United States looking to the construction of the deep St. Lawrence waterway. I note your suggestion that the position of the United States has been made sufficiently clear and definite to permit the Government of Canada to take the necessary steps contemplated and to discuss with the provinces of Ontario and Quebec the aspects in question. I entirely agree with you that there is no reason why at this time the Government of Canada should not take up such discussion with the provinces.

I note also that His Majesty's Government of Canada suggests that it would be advisable that definite and agreed engineering proposals for the development of the International Section would appear to be necessary preliminary to any computation of costs or decision as to the order of construction or division of tasks and that a conference should be held between the Canadian

section of the Joint Board and engineers representing the province of Ontario; further that it would be advisable that such a conference should be followed by reconsideration of the engineering problems in the International Section by the whole Joint Board. Of course, the Government of the United States fully realizes the desirability of the Canadian Government's consultation with the provinces and with the Canadian section of the Joint Board of Engineers. The United States section of the Joint Board will be prepared at any time to take up with the full Board and discuss and reconsider engineering problems connected with the construction of the International Section. I have the honour to suggest, however, that it would seem as though the entire subject of treaty negotiation need not be postponed until the termination of these discussions and of the reconsideration by the Joint Board of Engineers and that it might be desirable for the negotiations to go on concurrently with the examination of such engineers as their advice and assistance would be necessary. The United States will be prepared to co-operate to the fullest extent with the Canadian Government at any time for the purpose of accomplishing the improvement contemplated.

Accept, Sir, the renewed assurance of my highest consideration.

(Sgd.) FRANK B. KELLOGG.

The Honourable VINCENT MASSEY,
Minister of the Dominion of Canada.

II

1. REPORT OF THE CANADIAN NATIONAL ADVISORY COMMITTEE, JANUARY, 1928

NATIONAL ADVISORY COMMITTEE, ST. LAWRENCE WATERWAY

OTTAWA, ONT., January 11, 1928.

The Right Honourable

W. L. MACKENZIE KING, C.M.G., M.A., LL.B., LL.D.,
Prime Minister,
Ottawa, Ont.

SIR,—The Committee appointed by Order in Council on May 7, 1924, to advise the Government on the broad aspects of the question of improving the St. Lawrence waterway, so as to provide increased facilities of navigation between the Great Lakes and the sea, has given careful consideration and much thought to the problem, and has the honour to submit the following general conclusions:

(1) We concur in the finding of the Joint Board of Engineers that the project is feasible, but we feel that, should the work be undertaken, proper allowance should be made for future requirements, and, inasmuch as the depth contemplated for the locks of the proposed scheme is 30 feet on the sills, we would recommend that the navigable depth of the reaches and connecting channels throughout should not be restricted to 25 feet, as contemplated by the engineering report. In the language of the report itself, we feel that any improvement of the St. Lawrence waterway should "provide to the best advantage, at this time and ultimately, for the development of the capacities and possibilities of the waterway." With this in mind, we have considered whether the depth should not be a uniform one of 30 feet, but, having regard to the statement in paragraph 111 of the report of the Joint Board of Engineers that the majority of the Canadian section favour initial excavation to a depth of 27 feet (accommodating vessels of 25-foot draft), we are of opinion that a depth of 27 feet should be sought. We are strengthened in that view by the recommendation of the United States St. Lawrence Commission of a 25-foot draft, which means a 27-foot navigation. This United States recommendation is based on the conclusions reached, after elaborate study by the United States Department of Commerce, to the effect that

"In order to assure proper ocean connection, the minimum depth of channels should be 27 feet, thus accommodating vessels of 25-foot draft; such draft would include 54 per cent of American cargo vessels and 88 per cent of all our entrances and clearances. It is felt that restricting operation to any less percentage of ocean-going vessels would materially detract from the usefulness of the proposed waterways."

An important consideration in this connection is the fact that it is much less costly to provide a proper depth at the outset of such an undertaking than to go over the work at a later date and deepen it.

(2) We have stated our belief that the project is feasible; whether it is desirable at this time is a question that has engaged our earnest consideration. The Order in Council appointing us, in addition to directing attention to the technical aspects of the problem, referred as well to its economic, financial and international phases. The economic aspects of the proposal were fully investi-

gated by the International Joint Commission which went very exhaustively into the matter in 1921 and made a voluminous report in the course of which it was stated:

"As to the economic practicability of the waterway, the commission finds that, without considering the probability of new traffic created by the opening of a water route to the seaboard, there exists to-day, between the region economically tributary to the Great Lakes and overseas points as well as between the same region and the Atlantic and Pacific seabords, a volume of outbound and inbound trade that might reasonably be expected to seek this route sufficient to justify the expense involved in its improvement.

"It finds that, as between the American and Canadian sides of the tributary area, the former contributes very much the larger share of this foreign and coastwise trade, and in all probability will continue to do so for many years to come. The benefits to be derived from the opening of a water route to the sea will, therefore, accrue in much larger measure to American than to Canadian interests, though it is reasonable to assume that eventually the advantages may be more evenly distributed."

(3) We have carefully considered the financial aspects of the project. If it were seriously suggested that Canada should undertake to finance as a public undertaking the immense outlay that would be required even in the domestic section of the St. Lawrence, or assume one-half of the fresh financial obligations involved in the project as a whole, we would unhesitatingly recommend that no action be taken until such time as the Dominion shall have had opportunity to recover from the heavy financial burdens imposed by the war, by our railway obligations growing out of the war, and by the necessity, since the war ended, to find the large sums required for needed public works throughout the Dominion.

(4) We are of opinion, however, that an arrangement might be made which would make possible the undertaking at little, if any, public expense, so far as Canada is concerned. The St. Lawrence, between Montreal and Lake Ontario, consists of a national and an international section, and, with the exception of the Welland Canal, the international problem continues throughout to the head of the Lakes. We believe that the first concern of this Committee should be, and of the Government will be, the national aspects of the proposed undertaking, and we regard it as most desirable that the initial development take place in the purely domestic section of the river lying within the Province of Quebec. We believe that if a reasonable time were permitted in which to enable the resultant power to be economically absorbed the development of this national section would be undertaken by private agencies able and willing to finance the entire work, including the necessary canalization, in return for the right to develop the power.

(5) The Committee considers that the international section presents features of greater complexity. Concerning it, the engineers are not agreed as to whether a single-stage scheme or a two-stage scheme is the better plan of development and we think it greatly in the public interest that a further attempt be made to reconcile the varying views expressed in the report of the Joint Board. We believe also that proposals which would oblige a number of thriving Canadian communities on the St. Lawrence to live behind embankments at a lower level than the waterway should be very carefully examined. Another feature that should be safeguarded, in the consideration of the method of development to be adopted, is the control of the fluctuations of flow from Lake Ontario, which must be assured unless the interests of the purely national

section and of the port of Montreal are to be left in an unsatisfactory position. A scheme is now presented, in the appendices to the report, which involves consideration of an alternative location of the upper works of the Canadian two-stage plan. There are a number of reasons, therefore, that would seem to call for a further consideration of the purely engineering features of the international section, in which connection it may be advisable to ask the Ontario Government to nominate one or more engineers to co-operate with the United States and Dominion engineers in the making of a further study of the question.

(6) The Committee has given careful thought to the financial side of the international situation. Canada has been engaged for upwards of a hundred years in improving the navigation of the St. Lawrence River both above and below Montreal, and across the Niagara Peninsula. The Dominion has expended 30 millions on the ship channel that has made ocean navigation on a large scale possible to the port of Montreal. The proposed St. Lawrence project will benefit by that expenditure. The Dominion has spent fifty millions on canals and channel improvements between Montreal and Lake Erie, in which improved navigation United States shipping has had equal use and advantage. Canada has to date spent 87 millions on the Welland Ship Canal. Having regard to these vast expenditures on navigation works, certain of which, unlike United States works on the upper lakes, will be superseded by the proposed deepwater development of the St. Lawrence, we are of opinion that it would not be unreasonable to expect the United States to undertake the entire work, both for navigation and power, in the international section, and we are further of the opinion that even if the United States should do so the preponderance of outlay will have been with Canada. In support of this contention, the following figures are submitted, based on expenditures by both countries on the present through waterway, and on the estimated cost of the presently recommended scheme with 27-ft. navigation, a new American lock at Sault Ste. Marie of the same dimensions as proposed for the St. Lawrence shipway, and the development, on the St. Lawrence, of the power incidental to navigation:—

CANADA

Present works:

St. Lawrence ship channel	\$ 30,000,000
St. Lawrence and Welland canals	50,000,000
Lock at Sault Ste. Marie, Ontario	5,560,000 \$ 85,560,000

Proposed works:

Welland ship canal	115,600,000
National section, St. Lawrence shipway, 27-ft. navigation and development of 949,300 h.p.	199,670,000 315,270,000
Total for Canada	\$400,830,000

UNITED STATES

Present works:

Dredging St. Clair and Detroit rivers	\$ 17,536,000
Locks at Sault Ste. Marie, Michigan	26,300,000 \$ 43,836,000

Proposed works:

International section St. Lawrence shipway, 27-ft. navigation and initial development of 597,600 h.p.	\$182,157,000
To complete development—additional power 1,602,000 h.p.	92,090,000
Upper lake channels to 27-ft.	65,100,000 339,347,000
Total for United States	\$383,183,000

From the foregoing it will be seen that even if consideration be restricted to the work presently under discussion, the United States might, in view of the preponderance of benefit to be derived from the opening of the waterway, well assume the construction of the dams, canals and power development of the International section, as well as the work of deepening the channels and improving navigation to a depth of 27 feet from Lake Erie to Lake Superior.

For the same reasons which convince us that the development of the national section of the St. Lawrence should be entirely domestic, we feel that the Welland Ship Canal should continue to retain its purely Canadian complexion and be completed to whatever depth may ultimately be agreed upon, at the expense of Canada.

(7) As to the control and supervision of the works during construction, and operation and maintenance on completion, we are of opinion that all dams, embankments, power house substructures, water passages, gates and channel enlargements in the International section should be designed and constructed under the technical supervision of an international commission, which body might also be charged with full power, on completion, to supervise both maintenance and operation and to control and regulate the use of water at the power plants in the International section in order that such use may be prevented from creating conditions harmful to navigation in any part of the St. Lawrence, and in order that the operation of the various power plants be conducted with proper regard to the use of water at power plants in the lower or national section of the river. We feel, however, that locks and other navigation structures lying entirely within one country or the other can, on completion, be most advantageously maintained and operated by the usual Government agencies in the two countries.

(8) The Committee is cognizant of the fact that the plan of procedure herein outlined necessarily involves consideration of the problems of the province of Ontario from the standpoint of power supply during the interval between the development of the national section and of the international. We believe the situation justifies consideration of the present problem from the broad national standpoint by both the provinces concerned, and that in the national interests such arrangements should be made as will enable Ontario to secure her power requirements for eastern territory from the purely Canadian section of the river pending the development of the international reaches. We are of opinion that, in the light of the good understanding presently obtaining between the two provinces, this would not be difficult of arrangement, and that power could be thus secured at rates which will compare most favourably with present cost of Ontario power.

(9) In consideration of the economic aspect, we have given some thought to the question of possible export of power. As to that we would say that we are in complete accord with the feeling throughout Canada that export of power should not be permitted.

(10) We have considered whether the proposed waterway should be regulated and governed by treaties already in existence, or whether a new treaty should be negotiated, but feel that that is a matter which the Government would probably prefer to decide for itself. Therefore, we make no recommendation in that respect other than to express the conviction that in the event of a new treaty being negotiated, the United States should not be given any greater rights than obtain in existing treaties.

In conclusion, we would suggest that early opportunity be taken to reply to the overtures to Canada which the United States has made in regard to the St. Lawrence project, and we are of opinion that Canada's reply should contain the general sense of the views herein expressed. We would add the suggestion that, in view of the delicacy of the international negotiations involved, it would be inadvisable that our report be made public until such time as, in the discretion of the Government, it might be published without prejudice to Canadian interests.

I have the honour to be,
Faithfully yours,

(Sgd.) W. E. FOSTER,
Chairman.

2. OBSERVATIONS UPON THE REPORT OF THE CANADIAN NATIONAL ADVISORY COMMITTEE, BY CERTAIN OF ITS MEMBERS.

The undersigned, members of the Canadian National Advisory Board on the St. Lawrence Waterways Project, although in accord with many of the recommendations made by a majority of the members of the Board, regret their inability to concur in certain essential features of the report of the majority. They beg leave to respectfully submit their views and advice as follows:—

1. This project has been investigated by Mr. W. A. Bowden and by Col. Wm. P. Wooten, who submitted their report in 1921; after study of this report the International Joint Commission made its recommendations to the Governments of Canada and of the United States; the question was afterwards referred to a Joint Board of Engineers, comprising three Canadian and three American Engineers, which has submitted its report, dated November 16th, 1926, and from which report the conclusions and figures hereinafter submitted have been drawn.

2. The project is of broad national importance to the whole of Canada in its relation to navigation, whilst affecting more particularly the provinces of Quebec and Ontario in its relation to the development and marketing of power.

TECHNICAL FEATURES

3. Geographic and physical conditions would indicate that the St. Lawrence River is the natural channel through which the vast territories tributary to the Great Lakes should find an outlet to the sea.

4. It would appear advisable to follow in their general outline the plans submitted by the Joint Board of Engineers, subject to such changes as further investigations may render desirable.

Differences of opinion exist between the Canadian section and the United States section of the Joint Engineering Board with regard to the best plan of development of the International Rapids Section. A reconciliation of these differences of opinion may be obtained by referring the matter back to the Joint Engineering Board, enlarged by the addition of two or more members. These new members would be selected having in mind their knowledge of the special conditions arising in the Province of Ontario and their general qualifications to advise upon the proper regulation of the St. Lawrence River, as these matters are amongst the important ones upon which the differences of opinion have developed.

In the Soulanges Section various alternative plans of improvement have been investigated. Having in view the most efficient power development in this section it may be considered advisable to cause additional investigations to be made in order to definitely establish whether the three stage plan of development is the best or whether a two stage plan of development at Pointe-a-Biron and Cascades might not be more profitable ultimately. The latter project would eliminate the second stage of development under the recommended plan and would avoid using the canal for both navigation and power purposes.

5. The recommendations of the Joint Engineering Board as to the depth of locks, canals and channels may be accepted as providing for the time being the necessary facilities to navigation, but should the United States Government desire to act upon the suggestions made by a number of its advisers and

insist upon navigation channels *27 ft. in depth* instead of *25 ft. in depth* Canada may be justified in yielding on this point, inasmuch as the cost of securing this 27 ft. navigation would be lower if carried out as part of the initial project, than it would be if this work were undertaken separately later on.

ECONOMIC FEATURES

6. The project should be considered having in mind:—

(a) That it is primarily for the improvement of navigation between the Great Lakes and the sea; (b) that the interests of navigation therein must remain paramount; (c) that the interests of navigation therein have and must retain an international character.

7. The United States will benefit from these improvements to navigation to a much larger extent than Canada will, on account of the population served and the tonnage available.

8. Canada should distinguish between *improvements wherein the interests of navigation predominate* (although power will be developed incidentally thereto) and which are meant to provide international facilities,—and *improvements wherein the power development is the principal object in view*, which power insofar as it belongs to Canada or is developed in the national sections should be considered as a strictly Canadian asset to be retained solely for the benefit of Canada.

9. Canada would not seem to be well advised to segregate this undertaking in sections, divided by geographic or national lines. Canada should retain its interest in the improvements pertaining to navigation from Lake Superior to Montreal and also its rights of supervision and control on the projected improvements throughout the Great Lakes and the International sections of the project. The navigable channels will be crossing the international boundary line several times and it would not seem proper that Canada should surrender to the United States the credit, responsibility and initiative of developing the Great Lakes and the St. Lawrence River outside of the Province of Quebec. These navigable waters are as much the property of Canada as of the United States. What may prove an important factor in the development of our Western provinces and of the Province of Ontario should not be left to the sole care and attention of the United States.

10. It would seem wholly desirable that power developed in the national sections and Canada's share of power developed in the International section be not exported, permanently or temporarily. The energy so produced should be retained permanently in Canada as being a very important factor in its development. Should large amounts of power be temporarily exported there would be strong possibilities of causes of friction developing with the United States when this power would be required for use in Canada.

11. In view of the large amounts of power which would ultimately become available for use in the Provinces of Quebec and Ontario, it would appear desirable that the Governments of the Provinces of Quebec and Ontario agree with the broad lines of the policy adopted by the Government of Canada. It would seem important that the co-operation of the Provincial Governments concerned be obtained in respect of the features of this project wherein power development is the predominating object. The collaboration of the Government of Canada and of the Provincial Governments concerned towards the realization of this project would be a potent factor in insuring its success.

FINANCIAL FEATURES

12. In considering this project, the carrying out of which will involve the expenditure of large sums of money, it is necessary to carefully take into account the financial position of Canada. The war debts and railway obligations will, for many years, weigh heavily on the Canadian tax-payer and throughout the country public works have to be undertaken from time to time to provide for urgent needs. Moreover, Canada has already built, at its own expense, an extensive system of canals, has improved navigation facilities in the St. Lawrence River below Montreal and is completing, at a cost to Canada of about \$116,000,000, the Welland Canal, which will connect Lakes Erie and Ontario. Should the new project be undertaken all *the present improvements between Lake Ontario and Montreal will be scrapped*, although they are now rendering good service and are capable of accommodating more traffic than is now available. It may be safe to assume that the beneficial results from this undertaking will accrue to a population of about 40 millions of people in an immensely wealthy country, the United States, whereas in Canada the population affected will, for the time being, not exceed 5 millions of people.

13. An outline of the basis upon which negotiations could be carried on between Canada and the United States is submitted. These suggestions have no claim at being exhaustive or final, but are intended merely to help visualize the extent of Canada's financial participation, under certain conditions which might be improved upon:—

Cost of providing 27-ft. navigation and of developing power incidental to the improvements for navigation:—

Great Lakes—

Connecting channels	\$54,900,000
Sault Ste. Marie locks	6,500,000
Compensating works	3,700,000
	—————
	\$ 65,100,000

Welland Canal 115,600,000

Thousand Islands section 1,532,000

International Rapids section:

Crysler Island—Two stage development	566,000 horse-power at upper stage and navigation through to Lake St. Francis	180,625,000
Lake St. Francis section		1,330,000
Soulanges section—First stage—382,000 horse-power		105,210,000
Lachine section		55,839,000
Channel enlargements below Montreal		32,000,000
	—————	
Total estimated cost		\$557,236,000

This expenditure of say \$560,000,000 would provide 27-ft. navigation from the Great Lakes to the sea and incidentally, through the improvements to navigation, there would become available 566,000 horse-power in the International Rapids section and 382,000 horse-power in the Soulange section.

The apportionment of this expenditure *two-thirds for United States and one-third for Canada* would seem to be a generous contribution by Canada. On this basis the cost would be:—

To the United States	\$374,000,000
To Canada	186,000,000

Canada would be credited with the amounts already expended:—

On the Welland Canal..	\$ 85,000,000
On improvements below Montreal..	32,000,000
<hr/>	
	\$117,000,000

Canada would have to spend an additional amount of \$69,000,000 for which Canada would have 665,000 horse-power fully developed and installed. This amount of power distributed 283,000 horse-power in the Province of Ontario and 382,000 horse-power in the Province of Quebec should be readily disposed of under conditions that would relieve the Federal Treasury of any further burden in connection with the capital cost of the whole undertaking.

It should be noted that in this set-up the United States are asked to take their *two-thirds share* of the expenditure of \$105,210,000 in the Soulanges section, whereas improvements for navigation alone could be carried out at a cost of \$40,000,000. This would make a difference against the United States of \$43,474,000. On the other hand, Canada is assuming in the International Rapids section, on account of navigation improvements, a substantial share of the cost which will accrue to the benefit of power development which Canada may not be in a position to utilize for many years to come. Additionally, Canada is assuming *one-third* of the expenditure on the Great Lakes improvements, whereas, if the expense was divided on the basis of tonnage of the two countries Canada's proportion would probably be 1 for Canada to 15 for the United States. This represents a difference of \$17,360,000 against Canada. If we take into account that Canada would assume the cost of operation of the Welland, Soulanges and Lachine canals and the future capital and operating costs of the St. Lawrence channels below Montreal it would not seem unreasonable to include in the cost of navigation works in the Soulanges section the cost of power development incidental thereto and to adopt the *two-thirds* to the United States and *one-third* to Canada basis of apportionment.

POWER DEVELOPMENT

14. Canada would then be in a position to secure as and when needed the following:—

(a) In the International Rapids Section:—

Half of the power remaining in this section, that is 756,000 horse-power at a cost of \$46,000,000, which is half the total cost estimated at \$92,000,000. The power so developed would cost about \$60 per horse-power, capital value, and prove to be a decidedly profitable and desirable asset.

It should be noted, however, that in all probability this amount of 756,000 horse-power will not be required for Canadian use for some years. On the other hand, it is possible that the United States may desire to secure in the near future their share, amounting to 756,000 horse-power. In such a case, it would appear reasonable that an understanding be arrived at between Canada and the United States whereby the United States would undertake to build at Barnhart Island, at their own expense, all the dams, dykes and substructures necessary for the eventual full development. When and as Canada is ready to use its share of the power, in whole or in part, it will then build its own power-house and install the necessary machinery at its own expense and will then reimburse the United States the cost of the dams, dykes and substructures, *without interest*, in the proportion that the successive installations made by Canada bear to the total power capacity. Such an arrangement would entail

no hardship on the United States and could not be considered unfair, because Canada cannot be reasonably expected to develop power before it is in a position to utilize it, and, additionally, because the total cost to the United States of developing fully its own 756,000 horse-power and of providing all structures which will be availed of later by Canada will work out at a very reasonable capital cost per horse-power and would enable the United States to secure its share of the hydro-electric energy under very favourable conditions.

(b) In the Soulanges Section:—

1. Through the second stage of development 500,000 horse-power less 12,000 horse-power placed out of commission, at a cost of \$37,000,000, which works out to about \$76 per horse-power capital value, a very profitable and valuable asset.

2. Through the third stage of development, 974,000 horse-power less about 230,000 horse-power put out of commission, representing a net amount of about 744,000 horse-power, estimated to cost \$64,000,000, being \$86 per horse-power capital cost, again a very valuable asset.

(c) In the Lachine Section:—

1. Through the first stage development, 391,000 horse-power at an estimated cost of \$81,247,000, which would represent \$210 capital cost per horse-power.

2. Through the second stage development, 422,000 horse-power less about 12,000 horse-power put out of commission, leaving a net amount of 410,000 horse-power estimated to cost \$42,000,000 being about \$100 capital cost per horse-power.

It seems evident that in this section the first and second stages of development should be considered together, giving a total of 810,000 horse-power at an average cost of about \$154 capital value per horse-power. Power development in this section should await conditions which would render this expenditure profitable. The relatively higher cost per horse-power in this section would be partly compensated by its proximity to a large industrial centre, Montreal.

CONSTRUCTION AND OPERATING FEATURES

15. The work connected with the carrying out of the projected improvements for navigation (with power incidentally developed thereby) situated in Canadian territory, which of course includes the Welland Canal, should be placed or left under the direction and control of the Government of Canada or of a Canadian Board or Agency.

16. Work in United States territory, such as the Sault Ste. Marie and International rapids locks and canals, should be placed or left under the direction and control of the Government of the United States or of a United States Board or Agency.

17. Work in the international channels and sections should be placed under the direction and control of an international Board or Agency, upon which Canada and the United States would have equal representation.

18. The operation and maintenance of the various navigation improvements lying wholly in one country should be placed in charge of the country in which the same are situated.

19. As regards the power developed incidentally to the improvements to navigation in the International rapids sections, it would seem desirable to have each country operate its power works but should this be found impracticable, then same should be placed under the control and direction of an international board upon which Canada would have equal representation with the United States.

GENERAL FEATURES

20. The treaty entered into between Canada and the United States in pursuance to this project would clearly acknowledge the full and uncontrolled jurisdiction of Canada over any and all sections and parts of this undertaking lying wholly in Canadian territory and vice-versa. Both countries would grant one another the reciprocal customary safeguards as regards maintenance, operation, right of usage, apportionment of capital expenditure for all the improvements to navigation (with power incidental thereto).

21. This treaty, as regards the international navigation features of this project, should extend no further or greater rights than those now assured to the United States under existing treaties.

22. The understanding and agreement between Canada and the United States under this treaty would cover the necessity, in the interests of all concerned, of preserving the full potential value of the Great Lakes and St. Lawrence watershed for navigation and power purposes.

23. It would appear of great importance that the Crown retain permanently its proprietary rights in all the improvements connected with this vast undertaking and pertaining to both navigation and power development. It is not difficult to visualize the immense value to Canada of retaining the control and disposal of such a large amount of hydro-electric energy admirably situated and which may be advantageously developed. In respect of an undertaking of this magnitude, which may insure the prosperity of many generations of Canadian citizens, the permanent ownership of this great Canadian heritage should not be surrendered to private interests but the operation of the power works developed by such a project could be leased or farmed out, under conditions to be studied and determined.

24. In the opinion of the undersigned, the project is feasible and practicable and may be proceeded with when the important economic and financial questions involved in such an undertaking, a few of which are outlined in the preceding paragraphs, have been satisfactorily dealt with.

Respectfully submitted:

(Signed) BEAUDRY LEMAN

I concur in the above,

(Signed) ADELARD TURGEON.

Montreal, January 18th, 1927.

III

1. ORDER IN COUNCIL REFERRING TO THE SUPREME COURT OF CANADA CERTAIN QUESTIONS AS TO WATER POWER RIGHTS OF THE DOMINION AND THE PROVINCES.

P.C. 115

CERTIFIED copy of a Report of the Committee of the Privy Council approved by His Excellency the Governor General on the 18th January, 1928.

The Committee of the Privy Council have had before them a report, dated 17th January, 1928, from the Minister of Justice, submitting that at the Dominion-Provincial Conference, held at Ottawa in the month of November, 1927, the Premiers of certain of the provinces questioned the right of the Dominion to dispose of water powers brought into being by the erection of Dominion works for the improvement of navigation, and asserted a right on the part of the provinces to dispose of any such water powers within the limits of the province; and

That in the discussion which followed regarding this claim, and also with regard to the whole question of the division of legislative control over and proprietary interest in water powers, it was found impossible to reach any general agreement as between the Dominion and the provinces, and in the result a request was made by the Premiers of Ontario and Quebec that the Dominion undertake to refer the whole matter to the Supreme Court of Canada for hearing and consideration.

The Committee, therefore, on the recommendation of the Minister of Justice, advise that, pursuant to the powers in that behalf conferred by section 60 of the Supreme Court Act, Your Excellency may be pleased to refer to the Supreme Court of Canada for hearing and consideration the following questions:

1. Has the province any proprietary interest in flowing waters within the province, and, if so, what is the nature of such interest?
2. Does the ownership by the province of the bed of any stream, whether such bed be level or sloping, give to the province the ownership of water powers:
 - (a) created thereupon by Dominion works for the improvement of navigation; or
 - (b) existing thereupon by nature?
3. Has the province any proprietary interest in or legislative control over:
 - (a) the canals, with lands and water power connected therewith, and the lake and river improvements which were conveyed to the Dominion by section 108, Schedule 3, of the British North America Act, 1867, or in or over the disposal of any water powers created thereby or existing thereupon from time to time; or
 - (b) water powers created by works for the improvement of navigation constructed by or under the authority of the Dominion since Confederation; or
 - (c) works constructed wholly for power purposes by the Dominion out of moneys appropriated by Parliament for such purpose?If so, what is the nature of such interest or control?
4. Has the Dominion exclusive legislative power to regulate waters for the purposes of navigation:
 - (a) in navigable waters; and
 - (b) in non-navigable waters?

5. Where the Dominion, for navigation purposes, expropriates or uses any part of the bed of any stream vested in the province, is the province entitled to any compensation for such expropriation or use?

6. Has the Dominion the exclusive legislative control over and proprietary interest in water powers brought into being by works authorized by Parliament to be erected in an international stream for the purpose of carrying out an agreement between Canada and any foreign country looking to the erection of joint works for the improvement of navigation in such stream?

If not, what are the powers and rights of the province with regard to such water powers?

7. Where the bed of a navigable stream is owned by the province or by a private individual, is the title of such owner subordinate to the public right of navigation, and to the provisions of any statute which may be enacted from time to time by Parliament, within the powers conferred by section 91 (10) of the British North America Act, 1867?

E. J. LEMAIRE,
Clerk of the Privy Council.

2. ORDER IN COUNCIL RESCINDING AND REPLACING P.C. 115.

P.C. 592

CERTIFIED copy of a Report of the Committee of the Privy Council approved by the Deputy of His Excellency the Governor General on the 14th April, 1928.

The Committee of the Privy Council have had before them a report, dated 13th April, 1928, from the Minister of Justice, submitting that at the conference of representatives of the Dominion and Provincial Governments held at Ottawa in the month of November, 1927, the Premiers of certain of the Provinces questioned the right of the Dominion to water-powers created or made available by the erection of Dominion works for the improvement of navigation and asserted a right on the part of the Provinces to such water-powers within the limits of the Province.

The Minister observes that in the discussion which followed with regard to this claim and also with regard to the whole question of the division of legislative control over and proprietary interest in water powers it was found impossible to reach any general agreement as between the Dominion and the Provinces, and in the result a request was made by the Premiers of Ontario and Quebec that the Dominion undertake to submit a case to the Supreme Court of Canada for hearing and consideration.

In pursuance of this request Your Excellency was pleased by Order in Council of the 18th January, 1928 (P.C. 115), passed on the recommendation of the Minister of Justice, to refer certain questions to the Supreme Court of Canada for hearing and consideration pursuant to section 60 of the Supreme Court Act.

The Minister states that the statistics show that the inland water-borne commerce of the Dominion has attained to great dimensions and with the growth and settlement of the country will involve large future expenditures for improvements of the extensive waterways comprising the inland navigation of the Dominion.

The Minister submits that owing to the great importance of the questions in controversy, it was considered advisable to consult with representatives of the Provinces with respect to the questions to be submitted, and such conference having been held it was deemed advisable to revise the said questions and to submit additional questions, viz., Nos. 8 and 9 hereinafter set out at the request of representatives of the Province of Ontario.

The Minister accordingly recommends that Order in Council of the 18th January, 1928 (P.C. 115), be rescinded, and that, pursuant to the powers in that behalf conferred by section 60 of the Supreme Court Act, Your Excellency may be pleased to refer to the Supreme Court of Canada for hearing and consideration of the following questions:—

1. (a) Where the bed of a navigable river is vested in the Crown in the right of the Province, is the title subordinate to the public right of navigation?
 (b) If not, has the Dominion the legislative power to declare that such title is subordinate to such right?
2. Where the bed of a navigable river is vested in the Crown in the right of the province, has the Dominion power, for navigation purposes, to use or occupy part of such bed or to divert, diminish, or change the flow over such bed (a) without the consent of the province; (b) without compensation?

3. Has the Parliament of Canada the power, by appropriate legislative enactment, to authorize the Dominion Government to expropriate the lands of the Crown in the right of the province for the purposes of navigation with provision or without provision for compensation?

4. By section 108 of the British North America Act, 1867, and the first item of the Third Schedule thereto, the following public works and property of each province, amongst others, shall be the property of Canada, namely, "Canals with lands and water power connected therewith."

Has the province any proprietary interest in or beneficial ownership of or legislative control over the water power which, though connected with the said canals, is created or made available by reason of extensions, enlargements or replacements of said canals made by the Dominion since Confederation and which is not required from time to time for the purposes of navigation? If so, what is the nature or extent of such interest or ownership or control?

5. Where the bed of a navigable river is vested in the Crown in the right of the province, has the province any proprietary interest in or beneficial ownership of or legislative control over the water-power created or made available by works for the improvement of navigation constructed thereupon in whole or in part by or under the authority of the Dominion since Confederation which is not required from time to time for the purposes of navigation? If so, what is the nature or extent of such interest, ownership or control?

6. (a) Has the Dominion the exclusive proprietary interest in or beneficial ownership of or legislative control over water-powers created or made available by works authorized by Parliament to be erected in any boundary waters for the purpose of carrying out a treaty between His Majesty and a foreign country providing for the erection of joint works for (i) the improvement of navigation in such waters, or (ii) for the development of power, or (iii) for both?

The expression "boundary waters" in this question means the waters defined by the preliminary article of the Treaty dated January 11, 1909, between His Britannic Majesty and the United States of America.

(b) If the Dominion has not the exclusive proprietary interest in or beneficial ownership of or legislative control over such water powers, has the province the exclusive proprietary interest in or beneficial ownership of or legislative control over such water powers?

(c) If neither the Dominion nor the province has the exclusive proprietary interest in or beneficial ownership of or legislative control over such water-powers, what are their respective rights and interests in relation to such water-powers?

7. Has the Parliament of Canada legislative power to authorize the construction and operation by the Dominion Government of works wholly for power purposes and the acquisition by purchase or expropriation of the lands and property required for the purposes of such works including lands of the Crown in the right of a province (a) in interprovincial rivers; and (b) in provincial rivers?

"Interprovincial rivers" in this question means rivers flowing along or across the boundaries between provinces.

8. May a province notwithstanding the construction by the Dominion for the purposes of navigation of works in a river the bed of which is within such province, control, regulate and use the waters in such river so long as such control, regulation and use does not interfere with navigation? In the case

of a river flowing between two provinces may such provinces jointly control, regulate and use the water in the same manner?

9. Has a province the right to control or use the waters in provincial rivers and to develop or authorize the development of water-powers within the province provided that in so doing navigation is not prejudiced and that the province complies with Dominion requirements as to navigation?

The Committee concur in the foregoing and advise that Your Excellency may be pleased to refer the said questions to the Supreme Court of Canada for hearing and consideration, accordingly.

(Sgd.) E. J. LEMAIRE,
Clerk of the Privy Council.



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